



AR *THW*

Docket No.: 826.1641

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Masahira DEGUCHI

Serial No. 09/731,799

Group Art Unit: 2123

Confirmation No. 7224

Filed: December 8, 2000

Examiner: Thomas Stevens

For: APPARATUS AND METHOD FOR OPTIMIZING THREE-DIMENSIONAL MODEL

LETTER TO EXAMINER REQUESTING WITHDRAWAL OF FINALITY OF ACTION

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

On or about December 1, 2004, a Request for Continued Examination (RCE) was filed. On or about January 21, 2005, a non-final Office Action (first Action after the RCE) was issued rejecting all claims over Imagawa. On or about March 3, 2005, in a telephone call with the undersigned, the Examiner was informed that Imagawa was not prior art, the Examiner agreed and also agreed to withdraw the Action and issue a new non-final action. On or about March 25, 2005, the Examiner issued a "final" Office Action (second Action after the RCE) newly citing Migdal and Kramer to reject all of the claims. The MPEP indicates:

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).
(See 706.07(a) Final Rejection, When Proper on Second Action)

The Action mailed March 25, 2005 was not necessitated by any amendment by applicant or any information in an information disclosure statement. As a result, the finality of the Action is improper. It is requested that the finality be withdrawn.

Respectfully submitted,

STAAS & HALSEY LLP

Date: _____

4/8/5

By: _____



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